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Committee on Members' Interests
Paper for the meeting on 26 November 2012

**The relevant requirements for
disclosure of pecuniary interest by Members and
not voting or withdrawal in case of direct pecuniary interest**

Purpose

This paper provides information concerning the rules in the Rules of Procedure ("RoP") on disclosure of direct or indirect pecuniary interest by Members, and not voting or withdrawal in case of direct pecuniary interest, and invites members to consider issuing this paper to all Members of the Fifth Legislative Council ("LegCo") to assist them in the understanding of the requirements and the compliance with the relevant rules.

Disclosure of pecuniary interest by Members

2. Rule 83A of RoP provides that in the Council or in any committee or subcommittee, a Member shall not move any motion or amendment relating to a matter in which he has a pecuniary interest, whether *direct or indirect*, or speak on any such matter, except where he discloses the nature of that interest. The main purpose of such disclosure is to ensure that other Members and the public are made aware, when a Member is participating in the proceedings of the Council or its committees, of any pecuniary interest which might reasonably be thought to be relevant to those proceedings.¹

¹ Speech of the Chairman of CMI of the Fourth LegCo during the debate on "Issues in relation to procedural rules on pecuniary interests" at the Council meeting of 14 July 2011, Hansard, p. 14324.

"Direct or indirect pecuniary interest"

3. RoP does not provide specifically the circumstances under which a Member does or does not have a pecuniary interest in a matter that is before the Council or a committee, be it direct or indirect. It is for individual Members to judge whether they have a direct or indirect pecuniary interest in the matter under consideration at the relevant meeting of the Council and committees. The basic principle as having been adopted by the Committee on Members' Interests ("CMI") of the previous LegCo in determining whether a pecuniary interest should be disclosed is whether the interest might reasonably be thought by others to influence the Member's actions or speech in the matter being considered.² It has been the view of CMI that for a pecuniary interest to be direct, it should be immediate and not merely of a remote or general character. As regards "indirect pecuniary interest", it is an interest not immediate and personal to a Member, but does have a certain relationship with the Member which would make a reasonable person to consider that such interest might have certain influence on the action or speech of the Member.³

4. The requirement for disclosure of pecuniary interest by Members under Rule 83A is distinct from the requirement for registration of interests by Members under Rule 83. As provided in paragraph III(3) of the Guidelines on Registration of Interests issued to all Members, "[t]he registering of interests is additional to, and in no way a replacement of, the requirement on Members to disclose pecuniary interest under Rule 83A". Hence, an interest registered still requires to be disclosed if it falls within Rule 83A.

Timing of disclosure of pecuniary interest

5. Under Rule 83A of RoP, disclosure by a Member of the nature of his direct or indirect pecuniary interest in a matter in the Council, a committee or subcommittee is a condition to the Member's speaking on the matter. Based on the principle that it is a Member's responsibility to disclose his pecuniary interest in a matter being considered to enable other people to judge if his views on the matter have been influenced by his

² Paragraph 4, LC Paper No. CMI/17/09-10 for the meeting of Committee on Members' Interests held on 16 December 2009.

³ Paragraph 3.4, Report of the Committee on Members' Interests on its consideration of a complaint against Ir Dr Hon Raymond HO, Hon Jeffrey LAM and Hon Abraham SHEK tabled at the Council meeting of 22 June 2011.

interest, it has been the view of CMI of the previous term that a Member should disclose his pecuniary interest at the beginning of his speech on the matter.⁴

Not voting or withdrawal in case of direct pecuniary interest

6. Rule 84(1) of RoP provides that in the Council or in any committee or subcommittee, a Member shall not vote upon any question in which he has a *direct* pecuniary interest except where his interest is in common with the rest of the population of Hong Kong or a sector thereof or his vote is given on a matter of Government policy. Rule 84(1A) further provides that in the Council or a committee of the whole Council, a Member shall withdraw when a vote is taken on a question in which he has such a direct pecuniary interest, as the mere presence of a Member under those circumstances may affect the voting result. If a Member has failed to withdraw, under Rule 84(3A), any Member may move without notice a motion for the withdrawal of the Member after the President has put the question on the original motion but before the vote is taken. If the withdrawal motion is passed, the Member shall withdraw when the original motion is voted on. Also, under Rule 84(4), any Member may move without notice a motion to disallow the vote of a Member before the result of the voting is declared. The procedure on the moving of a motion for the withdrawal of Member or disallowance of vote on grounds of direct pecuniary interest is set out in Rule 84 of RoP as well as rule 3 and Appendix II of the House Rules.

7. Regarding the interpretation of "a sector thereof" in Rule 84(1), the subject was studied by CMI in the 2000-2001 session. After deliberation, CMI of the Second LegCo concluded that it was technically impossible to give a clear and clean definition of the phrase "a sector thereof", and individual Members should decide whether their pecuniary interests were common to "a sector of the population of Hong Kong", in the context of their own particular circumstances.⁵

⁴ Paragraph 3.8, Report of the Committee on Members' Interests on its consideration of a complaint against Ir Dr Hon Raymond HO, Hon Jeffrey LAM and Hon Abraham SHEK tabled at the Council meeting of 22 June 2011.

⁵ LC Paper No. CMI/52/00-01 issued to all Members vide LC Paper No CMI/53/00-01 on 6 June 2001.

Sanctions relating to interests

8. Under Rule 85, any Member who fails to comply with Rule 83A on disclosure of pecuniary interest, or Rule 84(1) or (1A) on voting or withdrawal in case of direct pecuniary interest may be admonished, reprimanded or suspended by the Council on a motion to that effect.

Relevant rules

9. For Members' ease of reference, Rules 73, 83A, 84 and 85 of RoP, as well as rule 3 and Appendix II of the House Rules, are reproduced in the **Appendix**.

Advice sought

10. Members are invited to note the above information and consider issuing in the name of CMI a paper containing the information in paragraphs 2 to 8 above to all Members of the Fifth LegCo.

Council Business Division 3
Legislative Council Secretariat
21 November 2012

**Extract from the Rules of Procedure and
House Rules of the Legislative Council**

Rules of Procedure

73. Committee on Members' Interests

(1) There shall be a standing committee to be called the Committee on Members' Interests –

- (a) to examine the arrangements made for the compilation, maintenance and accessibility of the Register of Members' Interests;
- (b) to consider any proposals made by Members or others as to the form and contents of the Register;
- (c) to consider any complaint made in relation to the registration and declaration of Members' interests or any complaint of a failure to do so and, if it thinks fit after consideration, investigate such complaint; (*L.N. 174 of 2006*)
- (ca) to consider any complaint made in relation to the conduct of Members referred to in Rule 83AA (Claims for Reimbursement of Operating Expenses or Applications for Advance of Operating Funds) and, if it thinks fit after consideration, investigate such complaint; (*L.N. 174 of 2006*)
- (d) to consider matters of ethics in relation to the conduct of Members in their capacity as such, and to give advice and issue guidelines on such matters;
- (e) to report to the Council and make recommendations, including a recommendation as to a sanction under Rule 85 (Sanctions relating to Interests, Operating Expenses or Operating Funds). (*L.N. 174 of 2006*)

83A. Personal Pecuniary Interest to be Disclosed

In the Council or in any committee or subcommittee, a Member shall not move any motion or amendment relating to a matter in which he has a pecuniary interest, whether direct or indirect, or speak on any such matter, except where he discloses the nature of that interest.

84. Voting or Withdrawal in case of Direct Pecuniary Interest

(1) In the Council or in any committee or subcommittee, a Member shall not vote upon any question in which he has a direct pecuniary interest except where his interest is in common with the rest of the population of Hong Kong or a sector thereof or his vote is given on a matter of Government policy.

(L.N. 126 of 2002)

(1A) In the Council or a committee of the whole Council, a Member shall withdraw when a vote is taken on a question in which he has a direct pecuniary interest except where his interest is in common with the rest of the population of Hong Kong or a sector thereof or his vote is given on a matter of Government policy. *(L.N. 126 of 2002)*

(2) *(Repealed L.N. 126 of 2002)*

(3) *(Repealed L.N. 126 of 2002)*

(3A) A motion for the withdrawal of a Member on the ground of his failure to withdraw as required by subrule (1A) may be moved without notice by any Member after the President or Chairman has put the question on the original motion but before the vote is taken. *(L.N. 107 of 1999; L.N. 126 of 2002)*

(4) A motion to disallow a Member's vote on the ground of his direct pecuniary interest under subrule (1) may be moved without notice by any Member immediately upon the statement by the President, Chairman of a committee of the whole Council or chairman of his judgment on whether there is a required majority or, if a division has been ordered, upon his statement of the numbers of Members recorded in the division. *(L.N. 107 of 1999)*

(5) The President, Chairman of a committee of the whole Council or chairman shall have the discretion whether or not to propose the question

upon a motion under subrule (3A) or (4); and in exercising such discretion he shall have regard to the nature of the question upon which the vote is taken and to the consideration whether the interest therein of the Member whose presence or vote is challenged is direct and pecuniary and not an interest in common with the rest of the population of Hong Kong or a sector thereof and whether the vote is on a matter of Government policy. *(L.N. 107 of 1999)*

(5A) If the question for the withdrawal of a Member is proposed, the Member concerned may be heard in his place but he shall then withdraw from the Council or a committee of the whole Council for the duration of any vote on the question. If the motion is agreed to, the Member shall withdraw or continue to withdraw from the Council or the committee of the whole Council when the original question is put and voted upon. *(L.N. 107 of 1999)*

(6) If the question for the disallowance of a Member's vote is proposed, the Member concerned may be heard in his place but he shall then withdraw from the Council, a committee of the whole Council, a committee or subcommittee for the duration of any vote on the question. If the motion is agreed to, the President, Chairman of a committee of the whole Council or chairman shall state anew his judgment on whether there is a required majority in the original question or, in the case of a division, direct the Clerk to the Legislative Council or the clerk to alter the numbers voting and, in the case of the Council or a committee of the whole Council, the effect of the presence of the Member in the original division accordingly. *(L.N. 107 of 1999)*

(7) *(Repealed L.N. 107 of 1999)*

85. Sanctions relating to Interests, Operating Expenses or Operating Funds

Any Member who fails to comply with Rule 83 (Registration of Interests), 83A (Personal Pecuniary Interest to be Disclosed), 83AA (Claims for Reimbursement of Operating Expenses or Applications for Advance of Operating Funds) or 84(1) or (1A) (Voting or Withdrawal in case of Direct Pecuniary Interest) may be admonished, reprimanded or suspended by the Council on a motion to that effect. *(L.N. 126 of 2002; L.N. 174 of 2006)*

House Rules

3. Withdrawal of Member or Disallowance of Vote on Grounds of Direct Pecuniary Interest

- (a) A motion for the withdrawal of a Member on grounds of his direct pecuniary interest may be moved without notice by any Member after the President or Chairman of a committee of the whole Council has put the question on the original motion but before the vote is taken. The procedure on the moving of a motion for the withdrawal of a Member is in Appendix II.

- (b) A motion to disallow a Member's vote on grounds of his direct pecuniary interest may be moved without notice by any Member immediately upon the statement by the President, Chairman of a committee of the whole Council or chairman of his judgment on whether there is a required majority or, if a division has been ordered, upon his statement of the numbers of Members recorded in the division. The procedure on the moving of a motion to disallow a Member's vote is also in Appendix II.

**Procedure on the Moving of Motion
for the Withdrawal of Member or Disallowance of Vote
on Grounds of Direct Pecuniary Interest**

Moving of motion for the withdrawal of Member

1. A Member who wishes to move a motion under Rule 84(3A) of the Rules of Procedure for the withdrawal of another Member on grounds of the latter's direct pecuniary interest may pass a note to the President or Chairman of a committee of the whole Council indicating his intention to do so during the debate but before the question on the original motion is put. He should give the name of the Member whose withdrawal is proposed in the motion and the reasons for moving the motion.
2. The Member wishing to move the withdrawal motion may also notify the Member concerned at the same time, giving the reasons for moving the motion. This gives the latter the opportunity, if he so wishes, to clarify matters. Should the Member intending to move the motion decide not to proceed with the motion in the light of the clarification given, he should inform the President or Chairman of a committee of the whole Council of his decision.
3. If the withdrawal motion is to be moved, the Member wishing to move the motion should indicate his intention to speak immediately after the President or Chairman of a committee of the whole Council has put the question on the original motion.
4. The President or Chairman of a committee of the whole Council shall then call upon the Member to move the motion for the withdrawal of the other Member.
5. The President or Chairman of a committee of the whole Council shall decide whether or not to propose the question upon the withdrawal motion having regard to Rule 84(5) of the Rules of Procedure.
6. If the question for the withdrawal of a Member is proposed, the Member concerned may, in accordance with Rule 84(5A) of the Rules of Procedure, be heard in his place but he shall then withdraw from

the Council or the committee of the whole Council for the duration of any vote on the question.

7. If the withdrawal motion is negated, the Member may return to the meeting.
8. If the withdrawal motion is agreed to, the Member concerned shall withdraw from the Council or a committee of the whole Council when the original question is put and voted upon.

Moving of motion for the disallowance of vote

9. A Member may move a motion without notice under Rule 84(4) of the Rules of Procedure to disallow a Member's vote on grounds of the latter's direct pecuniary interest after a vote on the original motion has been taken but before the result of the voting is declared. The Member should as early as practicable pass a note to the President, Chairman of a committee of the whole Council or chairman indicating his intention to do so, and notify the Member concerned as far as possible.
10. (a) ***Where a division has not been ordered on the original motion,*** the Member who wishes to move the disallowance motion should indicate his intention to speak immediately upon the statement by the President, Chairman of a committee of the whole Council or chairman of his judgement on whether there is a required majority in the original question.

(b) ***Where a division has been ordered on the original motion,*** the Member who wishes to move the disallowance motion should indicate his intention to speak immediately upon the statement by the President, Chairman of the committee of the whole Council or chairman of the numbers of Members recorded in the division.
11. The President, Chairman of a committee of the whole Council or chairman shall then call upon the Member to move the motion for the disallowance of the other Member's vote.
12. The President, Chairman of a committee of the whole Council or chairman shall decide whether or not to propose the question upon the disallowance motion having regard to Rule 84(5) of the Rules of Procedure.

13. If the question for the disallowance of a Member's vote is proposed, the Member concerned may, in accordance with Rule 84(6) of the Rules of Procedure, be heard in his place but he shall then withdraw from the Council, a committee of the whole Council, a committee or subcommittee for the duration of any vote on the question.
14. If the disallowance motion is negatived, the Member may return to the meeting. The President, Chairman of the committee of the whole Council or chairman shall then declare the decision on the original motion.
15. If the disallowance motion is agreed to,
 - (a) *where a division has not been ordered on the original motion*, the President, Chairman of a committee of the whole Council or chairman shall state anew his judgement on whether there is a required majority in the original question; or
 - (b) *where a division has been ordered on the original motion*, the President, Chairman of a committee of the whole Council or chairman shall direct the Clerk to the Legislative Council or the clerk to alter the numbers voting and, in the case of the Council or a committee of the whole Council, the effect of the presence of the Member in the original division accordingly.